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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

CISCO SYSTEMS, INC., a Delaware
 corporation and CISCO TECHNOLOGY,
 INC., a California corporation,

Plaintiffs,

v.

DEXON COMPUTER, INC., a Minnesota
 corporation,

Defendant.

Case No. 3:20-CV-4926-CRB

**STIPULATION AND JOINT
 APPLICATION FOR LEAVE TO FILE
 DEFENDANT AND THIRD PARTY
 PLAINTIFF DEXON COMPUTER, INC.'S
~~[PROPOSED]~~ AMENDED THIRD PARTY
 COMPLAINT**

Hon. Charles R. Breyer, Presiding Judge

Trial Date: None

0640.002/9946

Case No. 3:20-CV-4926-CRB

STIPULATION AND JOINT APPLICATION FOR LEAVE TO FILE DEFENDANT AND THIRD PARTY
 PLAINTIFF DEXON COMPUTER, INC.'S ~~[PROPOSED]~~ AMENDED THIRD PARTY COMPLAINT

DEXON COMPUTER, INC., a Minnesota corporation,

Counterclaim Plaintiff and Defendant,

v.

CISCO SYSTEMS, INC., a Delaware corporation and CISCO TECHNOLOGY, INC., a California corporation,

Counterclaim Defendants and Plaintiffs.

DEXON COMPUTER, INC., a Minnesota corporation,

Third-Party Plaintiff,

v.

ATLANTIX GLOBAL SYSTEMS INTERNATIONAL, LLC, BIZCOM ELECTRONICS, INC., DIGI DEVICES ONLINE, ENTERPRISE BUSINESS TECHNOLOGIES, INC., FIBER CABLE CONNECTIONS, MJSI, MULTIMODE TECHNOLOGIES, LLC, NETWORK REPUBLIC, OPTIMUM DATA, INC., PARAGON, PURE FUTURE TECHNOLOGY, INC., SEASTAR IT TRADING LLC, SERVER TECH SUPPLY, SOFTNETWORKS, INC., STRADA NETWORKS, LLC, STRATEGIC TELECOM SUPPLY & SOLUTIONS, TEKSAVERS, UNLIMITED NETWORK SOLUTIONS, and WISECOM TECHNOLOGIES,

Third-Party Defendants,

STIPULATION & JOINT APPLICATION

Pursuant to 15(a)(2) of the Federal Rules of Civil Procedure Defendant, Counterclaim Plaintiff and Third Party Plaintiff Dexon Computer, Inc. (“Dexon”), Plaintiffs and Counterclaim Defendants Cisco Systems, Inc. and Cisco Technology, Inc. (“Cisco”), and Third-Party Defendant Paragon stipulate to the filing of Dexon’s Amended Third Party Complaint. The parties hereto agree that this request is reasonable and stipulate to entry of an Order as follows:

1. Dexon’s Third Party Complaint asserts indemnity and contribution claims against multiple entities believed to have supplied Dexon with product alleged by Cisco to be counterfeit.

2. On or about August 9, 2022, Cisco identified additional allegedly counterfeit product alleged to have been sold by Dexon. Based on its subsequent investigation, Dexon believes such products were supplied to it by proposed Third Party Defendants Tech Network Supply LLC; Team Tech Global LLC; iTech Devices; and Link-US, LLC.

3. Dexon timely tendered Cisco’s claims against it herein to the proposed new Third Party Defendants. Such proposed Third Party Defendants have either failed to acknowledge a duty to defend and indemnify Dexon or failed to respond to Dexon’s tender.

4. Formal discovery has not yet commenced in this matter. A Case Management Conference is currently scheduled for January 13, 2022.

5. A true and correct redline version of Dexon’s PROPOSED Amended Third Party Complaint asserting contribution and indemnity claims against the newly identified suppliers of allegedly counterfeit Cisco products is attached hereto.

6. Dexon asserts that the proposed amendments are not made in bad faith, are not futile, that this request is reasonable, and not intended for unnecessary delay. Further, including the newly identified suppliers of allegedly counterfeit Cisco products in the previously asserted contribution and indemnity claims promotes judicial economy and would cause no substantial or undue prejudice or delay.

The parties hereto agree, and stipulate to entry of an Order that allows Dexon to file the amended Third Party Complaint.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: November 29, 2022

Respectfully submitted,

/s/ Amanda Washton

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Dated: November 29, 2022

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1 Dated: November 29, 2022

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14 Phone: 202 326-7900

15 ***Attorneys for Plaintiffs and Counterclaim Defendants***
Cisco Systems, Inc. and Cisco Technology, Inc.

16 **ATTESTATION**

17 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest under penalty of perjury
18 that I have obtained consent to file this document from every signatory above.
19

20 Dated: November 29, 2022

CONKLE, KREMER & ENGEL, PLC

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22
23 By: /s/ Amanda R. Washton


Amanda R. Washton

24 Attorneys for Dexon Computer, Inc.

~~PROPOSED~~ ORDER

The parties' Stipulation and Joint Application is GRANTED. Dexon is hereby granted leave to file its PROPOSED Amended Third Party Complaint no later than one (1) week from the date of this Order.

DATED: December 2, 2022



Hon. Charles R. Breyer
United States District Judge

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 and Third-Party Plaintiff Dexon Computer, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

CISCO SYSTEMS, INC., a Delaware
 corporation and CISCO TECHNOLOGY,
 INC., a California corporation,

Plaintiffs,

v.

DEXON COMPUTER, INC., a Minnesota
 corporation,

Defendant.

Case No. 3:20-CV-4926-CRB

**DEFENDANT AND THIRD PARTY
 PLAINTIFF DEXON COMPUTER, INC.'S
 [PROPOSED] AMENDED THIRD-PARTY
 CLAIMS**

Hon. Charles R. Breyer
 Presiding Judge

Trial Date: None

DEXON COMPUTER, INC., a Minnesota
 corporation,

Counterclaim Plaintiff and
 Defendant,

v.

0640.002-9947

Case No. 3:20-CV-4926-CRB

DEFENDANT AND THIRD PARTY PLAINTIFF DEXON COMPUTER, INC.'S [PROPOSED] AMENDED
 THIRD-PARTY CLAIMS

1 CISCO SYSTEMS, INC., a Delaware
2 corporation and CISCO TECHNOLOGY,
INC., a California corporation,

3 Counterclaim Defendants and
4 Plaintiffs.

5 DEXON COMPUTER, INC., a Minnesota
6 corporation,

7 Third-Party Plaintiff,

8 v.

9 BIZCOM ELECTRONICS, INC., DIGI
10 DEVICES ONLINE, ENTERPRISE
11 BUSINESS TECHNOLOGIES, INC., FIBER
12 CABLE CONNECTIONS, MJSI,
13 MULTIMODE TECHNOLOGIES, LLC,
14 OPTIMUM DATA, INC., PARAGON, PURE
15 FUTURE TECHNOLOGY, INC., SEASTAR
IT TRADING LLC, SERVER TECH
SUPPLY, SOFTNETWORKS, INC.,
STRADA NETWORKS, LLC, TEKSAVERS,
UNLIMITED NETWORK SOLUTIONS,
WISECOM TECHNOLOGIES, TECH
NETWORK SUPPLY LLC, TEAM TECH
GLOBAL LLC, ITECH DEVICES, and
LINK-US, LLC

16 Third-Party Defendants,
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THIRD PARTY CLAIMS

1. Defendant and Third Party Plaintiff Dexon Computer, Inc. asserts the following claims against Third Party Defendants ~~Atlantix Global Systems International, LLC~~, Bizcom Electronics, Inc., Digi Devices Online, Enterprise Business Technologies, Inc., Fiber Cable Connections, MJSI, Multimode Technologies, LLC, Optimum Data, Inc., Paragon, Pure Future Technology, Inc., Seastar IT Trading LLC, Server Tech Supply, Softnetworks, Inc., Strada Networks, LLC, Unlimited Network Solutions, ~~and~~ Wisecom Technologies, Tech Network Supply LLC, Team Tech Global LLC, iTech Devices, and Link-US, LLC, and alleges as follows:

THE PARTIES

2. Third Party Plaintiff Dexon Computer, Inc. (“Dexon”) is a Minnesota corporation with its principal place of business at 9201 E. Bloomington Freeway, Suite BB, Bloomington, Minnesota 55420.

~~3. On information and belief, Third Party Defendant Atlantix Global Systems International, LLC is a Georgia limited liability corporation with its principal place of business in Georgia.~~

~~4.3.~~ On information and belief, Third Party Defendant Bizcom Electronics, Inc., is a California corporation with its principal place of business in California.

~~5.4.~~ On information and belief, Third Party Defendant Digi Devices Online is a foreign corporation with its principal U.S. place of business in Texas.

~~6.5.~~ On information and belief, Third Party Defendant Enterprise Business Technologies, Inc. is a New York corporation with its principal place of business in New York.

~~7.6.~~ On information and belief, Third Party Defendant Fiber Cable Connections is a Washington corporation with its principal place of business in Washington.

~~8.7.~~ On information and belief, Third Party Defendant MJSI is a California corporation with its principal place of business in California.

1 ~~9.8.~~ On information and belief, Third Party Defendant Multimode Technologies, LLC is
2 a Minnesota limited liability company with its principal place of business in Minnesota.

3 ~~10.9.~~ On information and belief, Third Party Defendant Optimum Data, Inc. is a Nebraska
4 corporation with its principal place of business in Nebraska.

5 ~~11.10.~~ On information and belief, Third Party Defendant Paragon is a Massachusetts
6 corporation with its principal place of business in Massachusetts.

7 ~~12.11.~~ On information and belief, Third Party Defendant Pure Future Technology, Inc. is
8 a California corporation with its principal place of business in California.

9 ~~13.12.~~ On information and belief, Third Party Defendant Seastar IT Trading LLC is a
10 Washington limited liability company with its principal place of business in Washington.

11 ~~14.13.~~ On information and belief, Third Party Defendant Server Tech Supply is a Virginia
12 corporation with its principal place of business in Pennsylvania.

13 ~~15.14.~~ On information and belief, Third Party Defendant Softnetworks, Inc. is a New
14 Jersey limited liability company with its principal place of business in New Jersey.

15 ~~16.15.~~ On information and belief, Third Party Defendant Strada Networks, LLC is a
16 foreign limited liability company with its principal place of business in British Columbia, Canada.

17 ~~17.16.~~ On information and belief, Third Party Defendant Teksavers is a Texas corporation
18 with its principal place of business in Texas

19 ~~18.17.~~ On information and belief, Third Party Defendant Unlimited Network Solutions is
20 a corporation with its principal place of business in California.

21 18. On information and belief, Wisecom Technologies is a corporation with its principal
22 place of business in Maryland.

23 19. On information and belief Tech Network Supply LLC is an Iowa limited liability
24 company with its principal place of business at 606 8th Street, Ames, Iowa 50010.

25 20. On information and belief Team Tech Global LLC is a New Jersey limited liability
26 company with its principal place of business at 1701 NW 93rd Avenue, Suite 203, Doral, Florida
27 33172.

21. On information and belief iTech Devices, Inc. is a California corporation with its principal place of business at 45333 Fremont Blvd # 5, Fremont, California 94538.

~~19.~~22. On information and belief Link-US, LLC is a North Carolina limited liability company with its principal place of business at 280 Premier Drive, Suite 111, Holly Springs, North Carolina 27540.

Supply of Alleged Counterfeit and Infringing Product

~~20.~~23. The Third Party Defendants are all reputable dealers and merchants with respect to ~~the~~ Plaintiffs Cisco Systems, Inc. and Cisco Technology, Inc.'s ("Cisco") products alleged by Cisco in the above captioned matter to be counterfeit and thereby ~~infringing herein~~ ("allegedly infringing Cisco product").

~~21.~~24. Dexon obtained such allegedly infringing Cisco product from the Third Party Defendants. While Dexon denies Cisco's allegations and believes the subject products to be genuine, Dexon relied in good faith on the Third Party Defendants in procuring or obtaining such products.

25. Without limitation, the Third Party Defendants warranted that such products sold to Dexon would be "delivered free of the rightful claim of any third person by way of infringement or the like." See U.C.C. §2-312(3).

~~22.~~26. Dexon timely tendered Cisco's claims against it herein to the Third Party Defendants and the Third Party Defendants have either failed to respond or denied any duty to defend or indemnify Dexon herein.

FIRST THIRD PARTY CLAIM
(Indemnification - All Third Party Defendants)

~~23-27.~~ 24-28. Dexon repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

~~24-28.~~ 25-29. Dexon was named in this litigation as a direct result of product procured from and/or supplied by the Third Party Defendants.

~~25-29.~~ 26-30. Third Party Defendants should be ordered to indemnify Dexon whether based on express agreement, implied agreement or common law.

SECOND THIRD PARTY CLAIM
(Contribution - All Third Party Defendants)

~~26-30.~~ 27-31. Dexon repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

~~27-31.~~ 28-32. Dexon was named in this litigation as a direct result of product procured from and supplied by the Third Party Defendants.

~~28-32.~~ 29-33. Dexon is entitled to contribution from Third Party Defendants, whether based on express agreement, implied agreement or common law, to pay or defray any judgment entered against Dexon herein.

PRAYER FOR RELIEF

WHEREFORE, Defendant, Counterclaim Plaintiff and Third Party Plaintiff Dexon Computer, Inc. prays for judgment and relief against Plaintiffs and Counterclaim Defendants Cisco Systems, Inc. and Cisco Technology, Inc. ("Cisco") and Third Party Defendants ~~Atlantix Global Systems International, LLC~~, Bizcom Electronics, Inc., Digi Devices Online, Enterprise Business Technologies, Inc., Fiber Cable Connections, MJSI, Multimode Technologies, LLC, Optimum Data, Inc., Paragon, Pure Future Technology, Inc., Seastar IT Trading LLC, Server Tech Supply, Softnetworks, Inc., Strada Networks, LLC, Unlimited Network Solutions, ~~and~~ Wisecom Technologies, Tech Network Supply LLC, Team Tech Global LLC, iTech Devices, and Link-US, LLC as follows:

~~a. — Dismissing Plaintiffs’ Cisco Systems, Inc. and Cisco Technology, Inc. claims with prejudice, together with costs and disbursements;~~

~~b. — Awarding Dexon actual damages, subject to proof at trial but in an amount in excess of \$75,000.;~~

~~c. — For equitable remedial efforts by Counterclaim Defendants sufficient to rehabilitate Dexon’s damaged reputation;~~

~~d. — Declaring that: i) original purchasers of Cisco products obtained the products and any associated embedded software via a “sale”; ii) there is no valid or enforceable EULA governing the embedded software in Cisco products sold by Dexon on the secondary market; and iii) Dexon’s customers’ are free to use and transfer such products pursuant to the first sale doctrine codified at 17 U.S.C. §109.~~

~~e. — For orders restraining or enjoining Cisco from engaging in similar conduct in the future;~~

~~f. — Awarding Dexon its costs and expenses of litigation, including reasonable attorneys’ fees;~~

~~g.~~a. An award in Dexon’s favor against Third Party Defendants sufficient to compensate Dexon for all economic loss, damages, attorney's fees and costs resulting from the claims herein; and

~~h.~~b. Such other and further relief as this Court deems just and equitable.

1 Dated: April 6, 2022

/s/ Amanda R. Washton

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Third-Party Plaintiff Dexon Computer, Inc.

DEMAND FOR JURY TRIAL

Dexon Computer, Inc. demands a trial by jury on all issues so triable.

Dated: April 6, 2022

/s/ Amanda R. Washton

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